

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #1	CCRB Case #: 202006572	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/12/2020 8:40 PM	Location of Incident: In front of the 34th Precinct Stationhouse	Precinct: 34	18 Mo. SOL 3/12/2022	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 09/12/2020 8:47 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/28/2020 12:30 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Mosher	02905	949371	SRG 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Loftus	18151	935198	DIS CTL

Officer(s)	Allegation	Investigator Recommendation
A.POM Thomas Mosher	Force: Police Officer Thomas Mosher used physical force against § 87(2)(b)	

Case Summary

§ 87(2)(b) filed the following complaint with IAB on September 12, 2020 via telephone. The complaint was received at the CCRB on September 28, 2020.

On September 12, 2021, at approximately 8:40 p.m., § 87(2)(b) and his girlfriend, § 87(2)(b) participated in a Black Lives Matter protest that concluded at the 34th Precinct Stationhouse in Manhattan. Officers, including PO Thomas Mosher of Strategic Response Group 2 and PO John Loftus of Disorder Control, formed a line and advanced towards the protestors. PO Mosher pushed § 87(2)(b) in the chest (**Allegation A – Force:** § 87(2)(g)).

There were 29 Body Worn Camera (BWC) videos associated with this protest (Board Review 01-29). Only PO Mosher's BWC video captured this specific incident (Board Review 01). § 87(2)(b) provided two cell phone videos, neither of which captured this incident (Board Review 30, 31).

Findings and Recommendations

Allegation (A) Force: Police Officer Thomas Mosher used physical force against § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) followed a Black Lives Matter protest until its conclusion at the 34th Precinct. § 87(2)(b) and § 87(2)(b) stood between cars parked along Broadway, to the right of the stationhouse entrance as 150 to 200 protestors gathered in front of the stationhouse and along the sidewalk. Following a speech from the organizers of the protest, a line of uniformed police officers stood in front of the stationhouse doors, along Broadway. Those officers ran an automated message over a loudspeaker stating that the protestors were blocking traffic and they had to move. The protestors split up into two groups on each sidewalk and the organizers told people to start walking away.

The line of officers marched towards the protestors, towards East 184th Street, while yelling, “move back” to get protestors to walk down the block. [The officer playing the recording and speaking on the loudspeaker was identified as PO John Loftus.] As § 87(2)(b) and § 87(2)(b) walked backwards up the block and § 87(2)(b) recorded the line of officers walking towards him with his cellphone. PO Mosher reached out with both open palms and pushed § 87(2)(b) on the chest, once. § 87(2)(b) stumbled back a bit but did not fall. PO Mosher did not say anything to § 87(2)(b) prior to pushing him and did not say anything during the push. § 87(2)(b) stated that he yelled something at the officer after being pushed, which might have been something about him not wearing a mask. § 87(2)(b) and § 87(2)(b) broke out from the group and went home (Board Review 32).

§ 87(2)(g) § 87(2)(b) stated that § 87(2)(b) yelled at PO Mosher in an “obnoxious or sassy tone” to put on a mask while they walked backwards on the sidewalk. This yelling was what prompted PO Mosher to push § 87(2)(b) in the chest with his hands (Board Review 33).

Cell phone video provided by § 87(2)(b) shows him recording PO Mosher and PO Loftus among the line of officers walking towards him on the sidewalk. PO Loftus yelled, “move back” over the loudspeaker. § 87(2)(b) had his camera pointed at PO Mosher but does not say anything to PO Mosher during this clip. At 00:08 seconds of the video, § 87(2)(b) points the camera down at the sidewalk between himself and PO Mosher, showing that he is within a couple of feet from PO Mosher (Board Review 31).

PO Mosher's BWC video captures the timeframe that the alleged push occurs, but the push is not captured. At 03:50 of the video, the officers line up across Broadway while several civilians on foot and with bicycles block the intersection. At 04:20 the officers march towards the civilians while PO Loftus yells, "move back" over the megaphone. The civilians disperse onto the sidewalks. The officers stop in the crosswalk and extend their line at 04:40 to cover the road and the sidewalks. At 05:30 a pre-recorded message plays over the loudspeaker stating that the crowd is blocking the flow of pedestrian traffic and are ordered to disperse. At 06:29, some civilians with bicycles return to the middle of Broadway. At 08:22, after three broadcasts of the pre-recorded message asking civilians to disperse, the officers move to the sidewalk. At 08:50 of the video, officers start marching towards the protestors on the sidewalk while PO Loftus yells "Move back" over a megaphone. § 87(2)(b) is initially on the sidewalk, walking away from the stationhouse with the group but turns around at 09:03 and points his phone towards PO Mosher. Protestors continue walking down the block, but § 87(2)(b) and § 87(2)(b) stop and take a step towards the officers. An unidentified black female with a megaphone, grey shirt and blue jeans grabs § 87(2)(b) by the shoulder and pulls him away from the officers at 09:07. She then places her arm in front of § 87(2)(b)'s stomach and continues guiding him away from the marching officers. § 87(2)(b) yells, "Where is your mask?" towards PO Mosher. § 87(2)(b) continues yelling towards PO Mosher as he walks backwards but it is inaudible. At 09:20 § 87(2)(b) turns around and walks away from the officers but turns back around at 09:29 and holds a hand up and extended towards the officers. At 09:36, § 87(2)(b) takes one step forward towards the officers, extends his right arm out towards the line of officers with his index finger sticking out. His hand goes past PO Loftus and at 09:37, a hand can be seen reaching under § 87(2)(b)'s right armpit. The view is obstructed, but afterwards § 87(2)(b) yells, "Don't touch me." § 87(2)(b) continues walking with the rest of the protestors and does not interact with PO Mosher again (Board Review 01).

PO Mosher did not initially recall this incident and did not know who § 87(2)(b) was. PO Mosher was shown § 87(2)(b)'s cell phone video recording and his own BWC video, and he stated that he vaguely recalled the incident. PO Mosher stated that protestors gathered in front of the 34th Precinct stationhouse and were told to disperse from the area so they would not breach the doors of the stationhouse. Pre-recorded voice messages were played approximately three times over a loudspeaker by PO Loftus, instructing the protestors to get out of the street and disperse or they would be arrested. Since they did not move, some officers started arresting those that refused to move. The remaining officers formed a line to walk the protestors northbound down the block and away from the stationhouse. As they were walking, § 87(2)(b) yelled at PO Mosher, asking where his mask was and other things that he could not recall but "were not very nice." § 87(2)(b) then stretched his arm out and reached past the line of officers in a threatening manner, between himself and PO Loftus. PO Mosher pushed § 87(2)(b) away with one hand to get § 87(2)(b) out of PO Mosher and PO Loftus' zone of safety. PO Mosher pushed him away from being too close because § 87(2)(b)'s actions were a potential threat to their safety (Board Review 34).

PO Loftus stated that he was assigned to operate the LRAD (Long Range Acoustic Device) which transmitted a message to the protestors that they were blocking vehicular and pedestrian traffic. PO Loftus set up the equipment and played the message to the crowd to disperse from the street and area of the stationhouse. The recording was played three times and then it was followed up by a different message that stated that individuals who refused to disperse would be subject to arrest. All the officers present then formed a line and moved in unison towards the crowd with the goal that the individuals would move out of the street and onto the sidewalk so that traffic flow could resume. The crowd was issued commands to move back through a loudspeaker.

PO Loftus initially recalled that PO Mosher pushed an individual and described that it was the

minimal amount of force he could have used to rectify the situation. PO Loftus did not recall what initially caused PO Mosher to push the individual. After viewing a video of the incident, he recalled that § 87(2)(b) took two or three steps forward towards the line of officers instead of moving along with the crowd. § 87(2)(b) yelled obscenities at the line of officers and kept moving forward with his arm extended like he was trying to break through their line. PO Loftus stated that § 87(2)(b) moving forward towards the officers was a safety issue as he got too close. PO Loftus stated that “too close” would be approximately an arm’s length away from the officers but it was subjective to each individual person. PO Loftus believed it was a bigger safety issue this time due to the circumstances of the situation they were in with the protestors (Board Review 35).

Under Patrol Guide Procedure 221-13, the “zone of safety” is defined as the distance to be maintained between an individual and responding members of service. The distance should be greater than the effective range of a weapon, and it may vary with each situation (Board Review 36).

Patrol Guide Procedure 221-02 on the use of force states that a member of service should apply no more than the reasonable amount of force necessary to gain control. The member of service should assess the situation continually and adjust the use of force as necessary (Board Review 37).

It is undisputed that several commands were issued for protestors to disperse for blocking the street and pedestrian traffic. Messages were played by PO Loftus over a loudspeaker more than three times, instructing individuals that they would be subject to arrest if they did not clear the area. A line of officers formed in the street and the officers waited approximately four minutes before moving in and enforcing the order from the pre-recorded message. Additionally, a line of officers marched towards the protestors on the sidewalk while PO Loftus continuously told them to move back.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 38).
- PO Mosher has been a member of service for 10 years and has been a subject in seven CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 21, 2021, a request was sent to the New York City Office of the Comptroller
- for any Notice of Claim filed in regards this to complaint. Results are pending (Board
- Review 40).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 39).

Squad No.: 1

Investigator: SI Rodriguez _____ 4/26/21
Signature Print Title & Name Date

Squad Leader: Mgr. Joy Almeyda _____ 4.28.21
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____